

COMMITTEE ON ELECTIONS MEETING 6/14/10

SB 14 - VOTER ID NUMBER 1233.



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1 CHAIRMAN: Committee on Elections will
2 now come to order. Will the Clerk please call the
3 role?

4 THE CLERK: Smith.

5 REP. SMITH: Here.

6 THE CLERK: Peña. Allen.

7 REP. ALLEN: Here.

8 THE CLERK: Anchia.

9 REP. ANCHIA: Here.

10 THE CLERK: Bohac.

11 REP. BOHAC: Here.

12 THE CLERK: Bonnen. Brown. Harper-
13 Brown.

14 REP. HARPER-BROWN: Here.

15 THE CLERK: Heflin.

16 REP. HEFLIN: Here.

17 CHAIRMAN: All right. Good morning.
18 Fresh from the season of political party traditions,
19 where we are in the habit of saying really nice things
20 about each other, we've decided to have a hearing on
21 voter ID and give us the opportunity to continue that
22 trend.

23 We have a charge this interim, which is
24 different in language but almost identical in substance
25 to the charge that was before this committee under its



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1 prior chairman during the last interim, and I noted that
2 the three items that are -- that we are asked to look at
3 this time were all in the charge the last time this
4 committee met during the interim under the leadership of
5 Leo Berman, and those would be the prevalence of fraud,
6 studying new laws in other states regarding voter
7 identification and recommended statutory changes.

8 So I see this proceeding as primarily
9 being an opportunity on our part to find out what is new
10 in the world and add that to the work that has already
11 been done, and so along --

12 Anybody have any comments to make or
13 questions of any kind before we get started, members?
14 No, okay.

15 At this time, the Chair will call Jay
16 Dyer, with the Office of the Attorney General, to
17 testify. Welcome. Good morning.

18 MR. DYER: Thank you, Mr. Chairman. Good
19 morning. My name is Jay Dyer, for the record, and I'm
20 here on behalf of the Office of the Attorney General,
21 and I'm here this morning briefly to give a quick recap
22 and a reminder of some background information on our
23 office's election code enforcement efforts and how we're
24 involved in that process and give you all an update as
25 to where things are now as to where things were 13, 14



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1 months ago, the last time we appeared before this
2 committee.

3 As a quick housekeeping matter and just
4 to let you all know, Eric Nichols, who many of you all
5 have met and know and who was our Deputy Attorney
6 General for Criminal Justice is sorry that he could not
7 be here. He is in West Texas. He is in the middle of
8 trial. Obviously that's the kind of thing that's been
9 set a long time in advance, so he is sorry that he could
10 not be here this morning.

11 As our office has testified to this
12 committee before, as well as others, our office has two
13 divisions within the Office of the Attorney General that
14 is primarily responsible for election code enforcement.

15 Number one is our Criminal Investigations
16 Division. This is the division that handles and
17 investigates the referrals that come into our office.
18 The second is the Criminal Prosecutions Division. This
19 is the division that, after an investigation is worked,
20 if the facts and law warrant presentation to the grand
21 jury, this is the division that will take it to a grand
22 jury, and if a grand jury decides to return an
23 indictment, this is the division that will prosecute it.

24 Now, as always, there are three important
25 things to keep in mind when discussing or considering



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1 the Attorney General's Office role in election code
2 violations. First, it is of paramount importance to
3 recognize and remember that our efforts are 100 percent
4 referral based, and the referrals come to our office
5 from three primary sources.

6 The first is the Secretary of State's
7 office. The second is, under some circumstances, if
8 some provisions of the election code are complied with,
9 registered voters can submit complaints to our office.
10 And third and finally, local officials, local law
11 enforcement officials, local election officials, can
12 refer cases to our office as well.

13 It's important to note that we do not now
14 nor have we ever stationed police officers, peace
15 officers, investigators or prosecutors at polling
16 places, either during early voting or on election day.

17 Our efforts are entirely dependent upon
18 third parties to let us know what is going on in the
19 field as far as election code violations are concerned.

20 CHAIRMAN: Can I interrupt you at this
21 point to make sure we're clear?

22 MR. DYER: Yes, sir.

23 CHAIRMAN: Before you continue.

24 MR. DYER: Absolutely.

25 CHAIRMAN: I don't want to do that any



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1 more than I have to. But when you say you can be
2 referred information from local officials, does that
3 mean that there could be a universe of prosecution out
4 there that you are not prepared to talk about that is
5 prosecuted locally that has not been referred to you?

6 MR. DYER: Absolutely. And that's my
7 second point. Actually we have direct and original
8 jurisdiction to prosecute election code violations but
9 our jurisdiction is by no means exclusive, and what we
10 can testify to is our experience with the election code
11 enforcement process, but our experience is one piece of
12 a much larger puzzle, and in order to get a real handle
13 on whether it, to what extent there may be violations
14 that are occurring, you would have to do some sort of a,
15 have some sort of a dialogue with, for example, local
16 officials, local DA's, local county attorneys that have
17 criminal jurisdiction to prosecute cases. These are
18 cases that can be prosecuted at the local level.

19 CHAIRMAN: So the purpose is to examine
20 the prevalence of fraud, which I think is the extent of
21 fraud in Texas elections, you're not really in a
22 position to be able to allow us to get our hands fully
23 around that?

24 MR. DYER: Our office can not do that,
25 no, sir. We can only talk about the things that have



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1 been referred to our office from outside.

2 CHAIRMAN: Okay. All right. Thank you.

3 MR. DYER: Absolutely. Third and
4 finally, we obviously have criminal investigations that
5 are pending and that are ongoing, and that, for the sake
6 of the integrity of those elections, as well as the
7 rights and the privacy interests of the accused, it's
8 important to recognize that we really can't discuss
9 ongoing investigations. That's something that's always
10 important to keep in mind.

11 Having said that, according to
12 information that has been compiled by our criminal
13 investigation and our criminal prosecution divisions, by
14 my count, we have received about 267 referrals since
15 August of 2002. Not all of those referrals, because of
16 either the facts or the law or both, will warrant a full
17 fledged prosecution. I'm here to tell you that over the
18 course of time, we have --

19 CHAIRMAN: What does a referral mean?
20 What does that mean, just someone is making a
21 complaint?

22 MR. DYER: It can mean any number of
23 things. That's a good question. For example, what can
24 happen is the Secretary of state, if an individual, and
25 they can talk about their process, I believe they're up



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1 next, if some sort of an allegation of voter fraud or an
2 election code violation comes into the Secretary of
3 State's office from a voter, they will look at it and
4 then make whatever determination they make as to whether
5 it rises to the level of an election code violation, a
6 criminal one at that. If so, they will refer it to our
7 office, and they can talk about their process, but once
8 we get it --

9 CHAIRMAN: So there's been some level of
10 scrutiny employed to the complaint before it gets to
11 you? If it's just a boldface sort of frivolous,
12 baseless, completely outside of any legitimate area
13 complaint, then it -- there is some kind of screening
14 process before it gets to you, so the fact that it is a
15 referral says something about it, in terms of the
16 potential legitimacy of the complaint, is that correct?

17 MR. DYER: Potentially. Let me be real
18 clear about that. I guess what I'm talking about is
19 that's it that comes from the Secretary of State's
20 Office, and I think that there is some level of a review
21 that goes on at that office, which I'll let them talk
22 about.

23 CHAIRMAN: Okay.

24 MR. DYER: But, for example, if the DA in
25 some county, or a sheriff in some county or a Texas



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1 Ranger or a law enforcement officer will refer it to us,
2 I would imagine that the same level of analysis
3 applies. I even, these are professional law enforcement
4 officers who are in the field, and I would imagine they
5 would refer something to our office only if they felt
6 that the facts or the law as they see them or understand
7 them, we think that it can rise to that kind of a level.

8 CHAIRMAN: Okay.

9 MR. DYER: And so of the referrals that
10 we have received, 35 of them have been resolved. They
11 have resulted in prosecutions that have been resolved.

12 CHAIRMAN: What does resolved mean?

13 MR. DYER: It can mean one of three
14 things. Of the 35, my understanding is they've either
15 been pled out, they've led to jury trials, or they've
16 been dismissed. I don't know, I don't think, although I
17 can run this down, that there's been an actual acquittal
18 after a jury trial, but I think --

19 CHAIRMAN: What is the equivalent of a
20 finding of no fraud?

21 MR. DYER: That would be a dismissal. I
22 mean, there's been some instances, I think there's been
23 a handful of them have been dismissed after they've gone
24 through the indictment process, I believe that that's
25 right. 35 of the total number of prosecutions that have



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1 been resolved. Maybe not I'm saying that right.

2 CHAIRMAN: I'm confused. When you say
3 resolved, I'm still not sure what you mean. You mean
4 they have been found to have been guilty of some degree
5 of fraud?

6 MR. DYER: Or the prosecution, after the
7 indictment phase, has been dismissed. Either someone
8 has been found guilty or someone has pled to some sort
9 of violation.

10 CHAIRMAN: Okay.

11 MR. DYER: Or has been dismissed after
12 the indictment.

13 CHAIRMAN: So in terms of the instances
14 of fraud, we're down to 35?

15 MR. DYER: That have been successfully,
16 because it's not always successfully, so successfully
17 resolved is a little bit of a misnomer. Taken to their
18 conclusion to the prosecutorial phase.

19 CHAIRMAN: Are you saying that the
20 difference between 267 and 35 may also involve
21 additional instances of fraud?

22 MR. DYER: Out of the 267 referrals, some
23 of them have resulted in prosecutions which are
24 currently pending. Some of them, for whatever reason,
25 either the facts or the law, has indicated that this is



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1 not worthy of an investigation, either because we can't
2 substantiate the facts, even if we could substantiate
3 the facts, we couldn't prove them beyond a reasonable
4 doubt so we don't take them to grand jury, or upon
5 further review, we just decided that based on our
6 analysis, a crime hasn't been committed.

7 CHAIRMAN: So we got three different
8 categories of that 267. We got sort of an indication of
9 fraud by either some sort of a deal or a conviction or
10 we have a segment of them that have been found not to
11 have any validity and then we've got some that are still
12 pending, is that sort of fair, in general, to say there
13 are three categories in which you could put the 267?

14 My question is apparently we've found
15 that 35 of them may have been fraud, is that correct?
16 And that there's others that are still pending?

17 MR. DYER: Okay, let me set this
18 straight. We've got 267 referrals.

19 CHAIRMAN: Right.

20 MR. DYER: Which I guess you could
21 describe allegations.

22 CHAIRMAN: Right.

23 MR. DYER: These allegations have been
24 investigated.

25 CHAIRMAN: Right.



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1 MR. DYER: Of those investigations, we
2 have a handful that have resulted in prosecutions that
3 are pending. These are people who have been indicted,
4 but we're not --

5 CHAIRMAN: So that 35 is pending?

6 MR. DYER: No, sir.

7 CHAIRMAN: Go ahead, I'm sorry.

8 MR. DYER: Two separate phases.

9 CHAIRMAN: Okay.

10 REP. HELFIN: Mr. Chairman, can you
11 define what you mean by a handful? What is a handful?

12 MR. DYER: I think a handful, I'll call
13 it 9.

14 CHAIRMAN: On a what?

15 MR. DYER: 12. All of our prosecutions
16 that are pending, meaning that these are things that
17 have gone through at least the indictment phase.

18 CHAIRMAN: Okay. Is that in addition to
19 the 35?

20 MR. DYER: That is in addition to the 35,
21 yes. Those that have gone to indictment but they
22 haven't been resolved.

23 CHAIRMAN: Okay.

24 MR. DYER: Either with a finding of
25 guilt --



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1 CHAIRMAN: So some are in the category
2 that are or may still be fraud, is it 35 and 12? 35 in
3 the original category and then 12 pending?

4 MR. DYER: There are 12 that are
5 pending.

6 CHAIRMAN: Okay.

7 MR. DYER: By my count, there are 12 that
8 are pending, meaning that they've at least been indicted
9 but they're waiting some level of resolution.

10 CHAIRMAN: So is that the universe of
11 these cases that are or may be fraud?

12 MR. DYER: Subject to either a jury trial
13 or some level of agreement between the defendant and the
14 prosecutor. There are 12 that have been indicted.
15 There's been enough evidence that a grand jury has
16 decided to return the indictment and that's where those
17 12 are sitting right now. We are waiting some level of
18 resolution. Apart from that, there are the 35 that have
19 been resolved, either through a plea agreement, a jury
20 trial or a dismissal.

21 CHAIRMAN: Resolved, if it's a jury
22 trial, means they were found guilty?

23 MR. DYER: Yes.

24 CHAIRMAN: Okay.

25 UNIDENTIFIED FEMALE: (Inaudible).



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1 MR. DYER: I can get that answer for
2 you. I don't have an answer to that.

3 CHAIRMAN: And some of them were just
4 settlements out of court?

5 MR. DYER: Some of them pled, yes, sir,
6 or some sort of I agree to plead to this violation.

7 CHAIRMAN: Representative Anchia?

8 REP. ANCHIA: What time frame are we
9 looking at, Jay?

10 MR. DYER: We're looking at from August
11 2002 until now.

12 REP. ANCHIA: Okay. So almost eight
13 years?

14 MR. DYER: Give or take, yes, sir.

15 REP. ANCHIA: Almost eight years. And
16 just to be clear, these are the ones that your office
17 has been dealing with?

18 MR. DYER: Absolutely.

19 REP. ANCHIA: This is potentially
20 exclusive of cases that other DA's, that local DAs, just
21 your office.

22 MR. DYER: That's correct. Yes, sir.

23 REP. ANCHIA: Part of the initiatives
24 that the AG's office undertook to deal with voter fraud
25 in the state.



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1 MR. DYER: They are referrals that our
2 office received and that led to the efforts that we've
3 took on.

4 REP. ANCHIA: You may not know this, you
5 may want to ask the Secretary of State's Office this,
6 but do you know how many votes have been cast in the
7 intervening eight years in the state of Texas?

8 MR. DYER: I don't know.

9 REP. ANCHIA: Sorry about that. I'll ask
10 the Secretary of State's office.

11 CHAIRMAN: So what I'm trying to do is
12 isolate from the 267 or eliminate from the 267 the ones
13 that that we have some finding that there is no fraud,
14 so in terms of the ones that are or may be fraud, we
15 have the 35 that you mentioned and the 12 that are
16 pending. That's 47. Is that of the 267?

17 MR. DYER: Yes, those are the ones that
18 have been through at least some part of the formal
19 process. We do have some investigations. The reason I
20 guess I'm getting hung up on the "Are" or "May be" is
21 that we do have ongoing investigations into some of
22 these referrals. Some of these referrals we've looked
23 at and we've decided, either for the facts or the law or
24 the passage of time, or what have you, these cases we're
25 not going to take to a grand jury.



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1 There are currently investigations that
2 are pending and ongoing. Those may result in findings
3 of fraud, and that's why I don't want to limit that to
4 47, because if we're investigating a case in U-name-it
5 county, will that result in evidence that can be
6 admitted at trial that will show that election code
7 violations happened? Possibly. So I guess that's why
8 I'm getting hung up on the "Are" or "May be."

9 CHAIRMAN: Okay.

10 MR. DYER: Because just to say there's 47
11 that are done --

12 CHAIRMAN: So there's 47 plus. Would you
13 characterize it as a few cases above and beyond that
14 that are still being investigated and may be referred to
15 a grand jury?

16 MR. DYER: There are cases that are being
17 investigated and that may result in a presentation to a
18 grand jury, I think that's fair.

19 CHAIRMAN: All right.

20 MR. DYER: They may not but they
21 certainly may be, depending on what the evidence will
22 show.

23 CHAIRMAN: Okay.

24 REP. HELFIN: Mr. Chairman?

25 CHAIRMAN: Yes.



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1 REP. HELFIN: Okay, now I'm confused. So
2 you had 35 cases resolved in the prosecution process.

3 MR. DYER: Yes, sir.

4 REP. HELFIN: But you said there were
5 some of those that were dismissed for lack of evidence.
6 How many of the 35 were dismissed?

7 MR. DYER: They were dismissed for any
8 number reasons. I don't know

9 REP. HELFIN: However many, for whatever
10 reasons.

11 MR. DYER: I can get that. I can get
12 that in terms of the dismissals.

13 REP. HELFIN: Do you think it was like a
14 third of half of them? Do you have any recall at all?

15 MR. DYER: No, sir. I think it was
16 probably -- I mean, I'm guessing, and I can confirm
17 this, I think of the 35, I recall 5.

18 REP. HELFIN: Okay. So instead of 47,
19 we're at 42. 12 in the indictment and then you had 35
20 of these, 30 that either pled or have gone to trial.
21 Would that be fair?

22 MR. DYER: Yes, sir, and they could have
23 been dismissed for any number of reasons.

24 REP. HELFIN: Okay. Thank you.

25 MR. DYER: Yes, sir.



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1 CHAIRMAN: Continue.

2 MR. DYER: As the snapshot, of the 35, 18
3 have been, for the sake of completeness, 18 of them
4 involved some level of allegation under 86006 of the
5 election code, which deals with mail-in ballot,
6 returning a mail-in ballot.

7 Two involved 84.0041, which involves an
8 application for a mail-in ballot. So of those 35,
9 there's been 9 of them involving illegal voting, which
10 is an offense that's delineated by 64.012 of the
11 election code, and the other 6 are what I will -- it's
12 any kind of a sampling of other offenses,
13 electioneering, releasing poll results before the poll
14 is closed, things of that nature.

15 CHAIRMAN: Do you have the ability to
16 talk, to tell us how many are impersonation fraud?

17 MR. DYER: That's a difficult question,
18 and just so we're clear, this is kind of one of the
19 things that we've been talking about, the concept of
20 voter impersonation, that is a sub-category of the
21 offense which is in 16012, which is illegal voting.

22 Voting impersonation has a stand-alone
23 offense. It's really not something that exists under
24 the penal code. The offense is called illegal voting,
25 which has, I think, four different sub-sections and it



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1 can encapsulate several different kinds of what could be
2 called fraud at a polling place on election day.

3 CHAIRMAN: Okay. And there are nine of
4 those.

5 MR. DYER: There are nine of those that
6 have been resolved.

7 CHAIRMAN: So you can't tell us of the
8 nine how many involved impersonation? You said there's
9 several sub-categories within illegal voting.

10 MR. DYER: Right.

11 CHAIRMAN: Do you have the ability to
12 tell us how many of the nine involved impersonation?

13 MR. DYER: I have not had a chance to
14 review the facts of those nine cases. What I can tell
15 you is that in at least one of those cases, and I think
16 this is out of Port Lavaca, and there was testimony
17 about this in front of this committee last April, and in
18 the Senate in March, there was an officer-holder that
19 was registering, I believe, resident aliens to vote, and
20 that those resident aliens subsequently voted. I don't
21 know what kinds -- I don't know what happened in the
22 polling places but apparently these people did vote, and
23 that there was some testimony that was adduced at trial
24 that these votes may have had some sort of an effect on
25 the leaks. There's one instance.



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1 CHAIRMAN: Okay.

2 REP. ANCHIA: Mr. Chairman?

3 CHAIRMAN: Yes, Representative Anchia.

4 REP. ANCHIA: Thanks, Jay. And I think
5 Mr. Nichols testified before this committee on those
6 cases.

7 MR. DYER: Yes, sir, I think so.

8 REP ANCHIA: And if I recall correctly,
9 there was a question as to mens rea with respect to the
10 actual voters. The voters were told by -- these are
11 legal permanent residents.

12 MR. DYER: I think that's right.

13 REP. ANCHIA: Correct?

14 MR. DYER: I think that's right.

15 REP. ANCHIA: These were not undocumented
16 persons. They were told by the candidate that they were
17 eligible as legal permanent residents to vote, is that
18 correct?

19 MR. DYER: That's my understanding.

20 REP. ANCHIA: I'm remembering probably
21 the same testimony from Mr. Nichols that you were, that
22 these legal permanent residents, in fact, had ID, they
23 had ID. They had state driver's licenses or state ID's,
24 and that they, in fact, voted not being citizens but
25 under the mistaken belief, based on the information



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1 given to them by the candidate, that they were eligible
2 to vote as legal permanent residents. Is that roughly
3 the facts?

4 MR. DYER: That's roughly my
5 understanding of that case.

6 REP. ANCHIA: We're talking about the
7 same one.

8 MR. DYER: I think that you probably know
9 more about this than I do. I don't think that those
10 voters were charged.

11 REP. ANCHIA: That's right. That's what
12 Mr. Nichols testified to the fact that they were not
13 charged.

14 MR. DYER: If they have been, I do not
15 know about it.

16 REP. HARPER-BROWN: Mr. Chairman.

17 CHAIRMAN: Yes, Representative Harper-
18 Brown.

19 REP. HARPER-BROWN: When we talk about
20 these cases, it's not just an individual that went in
21 and voted, they're not all necessarily just one
22 individual that went in and voted illegally, it could
23 involve hundreds or thousands of people that they took
24 in, or tens of people that they took in, or took their
25 ballots and fraudulently voted those ballots or had some



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1 irregularity with the voting process. So it could be a
2 number.

3 In other words, I was going back to
4 Representative Anchia asked how many votes had been cast
5 over those years, as if, you know, to say well, there's
6 only 35 cases, that would be only 35 people that had
7 done something wrong, but there may have been 35 people
8 but it could have involved more votes than just one, is
9 that correct?

10 MR. DYER: It could have involved more
11 votes than just one, yes, and kind of just to follow up
12 on that point, the 35 cases that have been resolved, and
13 again, just so that everyone is really clear, that's
14 just our office's experience on that, on that process,
15 and I think maybe to your point a little bit further, I
16 mean, I know for a fact that there were -- I say I know
17 for a fact, some of these cases, certainly on the mail-
18 in context, involved more than one ballot.

19 REP. HARPER-BROWN: Right.

20 MR. DYER: I mean, it's not necessarily
21 just 35 votes. What exactly the universe of votes that
22 these 35 or the 12 or 267 involved is just not something
23 we can -- obviously we can't talk about local law
24 enforcement.

25 REP. HARPER-BROWN: Right.



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1 CHAIRMAN: Can you tell us anything about
2 the extent to which voter fraud tends to find its way to
3 your office? I mean, is there something about this
4 particular crime that is more likely to find its way to
5 your office than other sorts of crime?

6 I mean, do you have any sense of whether
7 or not a preponderance of the evidence relating to
8 fraud, voter fraud in our state, is going to be relating
9 to matters before your agency or whether it is more
10 likely to be prosecuted locally?

11 I mean, is your presumption based on your
12 knowledge of this field, that you are dealing with the,
13 you know, tiny part of the voter fraud and the bulk of
14 it is dealt with locally or the other way around?

15 MR. DYER: I don't know that anyone in
16 our office would really have a good answer to that. I
17 think to get a full picture of the landscape again of
18 voter fraud in the state, I think you would probably
19 have to have some conversations with several DA's and
20 local officials. As to why complaints come to our
21 office, it may very well be because of the original
22 jurisdiction that our office does have.

23 Our office does have original
24 jurisdiction to prosecute an election fraud case,
25 whereas something like a robbery or burglary requires a



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1 little bit more interaction with the local DA, but if an
2 election code violation comes to our office and we
3 investigate it and we find that it warrants prosecution,
4 our office can just handle it directly. In terms of
5 what the exact numbers are that never make it to our
6 office because someone in Travis County refers it to the
7 county DA, I don't know.

8 CHAIRMAN: Just to make clear, if the
9 purpose of this committee is to establish the extent of
10 voter fraud, what we know in terms of the evidence in
11 our state, you're going to be able to tell us what you
12 know in your agency but you don't have any idea whether
13 that is a tiny part of the whole or whether it is the
14 whole?

15 MR. DYER: That's correct.

16 CHAIRMAN: Okay, all right.
17 Representative Anchia?

18 REP. ANCHIA: Thank you, Mr. Chairman.
19 Jay, I appreciate your testimony today.

20 MR. DYER: Absolutely.

21 REP. ANCHIA: You've always been really
22 helpful to help contextualize some of the issues that
23 we're dealing with. Write that down. It's another
24 favorite word of mine. Representative Bohac is writing
25 down my favorite words.



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1 Your office was nice enough to send us a
2 list of the matters that you have investigated and/or
3 prosecuted since 2002, and if you could just indulge me
4 for a second with some questions here about those
5 matters, and I don't think there's any disagreement with
6 anybody on this committee that voter fraud exists in the
7 state of Texas, and I'm sure you share that conclusion,
8 correct?

9 MR. DYER: Our office has seen evidence
10 of voter fraud, yes, sir.

11 REP. ANCHIA: And I would affirmatively
12 say that there is voter fraud in the state of Texas.
13 And one of the things that we're trying to get our hands
14 around, as Mr. Chairman discussed, was the extent of it,
15 and I think the charge also discusses a photo
16 identification. We do have a voter ID standard in the
17 state of Texas currently and it discusses how a voter
18 photo identification standard might address some of the
19 fraud that we see in the state, and it's been my
20 contention over time that most of the fraud that we do
21 see in the state, and I think it's borne out by the
22 matters that you articulated for us, that you described
23 for us today, is in mail-in ballot fraud. That is, a
24 bulk of what you see in the referrals and your
25 prosecution, successful prosecutions, correct?



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1 MR. DYER: We do see a significant number
2 of mail-in allegations, yes, sir.

3 REP. ANCHIA: And that's consistent with
4 what we see as well, and on the list that you gave me,
5 we saw, in terms of illegal voting -- Can you describe
6 --

7 We saw incidents of illegal voting. Can
8 you describe some of the fact patterns that you see
9 under illegal voting based on the complaints and the
10 prosecutions? Are there some typical fact patterns that
11 stand out?

12 MR. DYER: To be honest with you, I'd
13 have to refer you to someone who just kind of handles
14 the prosecutions and the investigations more on a
15 day-to-day basis than I do, and we can certainly see if
16 we can set that kind of a discussion up.

17 I mean, 64012 talks about 3 or 4
18 different categories of illegal voting. I do this from
19 memory. One of them is voting in an election you're not
20 supposed to, or you're not registered in; voting in an
21 election you're not eligible to vote in; impersonating a
22 voter. I think voting twice, and there's three or four
23 sub-sections, I think, under 64012.

24 REP. ANCHIA: And in the list that you
25 all sent over, under the allegation of illegal voting,



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1 there were also charges related to providing false
2 information on an application for an early ballot.

3 I'm just looking at the cases here. It
4 says, "Allegation of illegal voting, forgery," and then
5 the charges that were brought were seven counts, for
6 example, of knowingly providing false information on an
7 application for early voting ballot.

8 Do you categorize that as a, as an illegal
9 voting offense or a mail-in ballot, or voter
10 registration fraud event?

11 MR. DYER: It's hard to say.

12 REP. ANCHIA: It may be both.

13 MR. DYER: It certainly could be. I
14 believe that's up to the prosecutor to decide what he or
15 she feels he could prove beyond a reasonable doubt.

16 REP. ANCHIA: Okay.

17 MR. DYER: When presenting that
18 information to a grand jury or to a jury.

19 REP. ANCHIA: So on the list that you all
20 were nice enough to send over, we had allegations of
21 convicted felons registering and casting ballots. We
22 had official oppression.

23 What does that mean, official
24 oppression? Because under the charges, it says, "Two
25 counts of official oppression."



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1 I'm not sure exactly what that is.

2 MR. DYER: I don't know that I'm real
3 versed enough to talk about that specific offense.

4 REP. ANCHIA: Okay.

5 MR. DYER: I can look it up and get back
6 to you.

7 REP. ANCHIA: No worries. Forgery, we
8 had folks who made false reports to police, possessing a
9 ballot without the voter's consent, mail-in ballot
10 violations, we see that throughout.

11 Anyway, so there are any number of
12 instances of illegal voting. There was one case, and
13 you might want to talk about this, of voting, one kind
14 of illegal voting, voter impersonation at a polling
15 place that was in Harris County and it's the case of
16 Jack Carol Crowder, right?

17 MR. DYER: Yes.

18 REP. ANCHIA: I was interested to see
19 this, because up until this case, in looking through the
20 list that your office had provided, I hadn't really
21 found a case that would have been prevented if any of
22 the bills had passed related to photo identification
23 during the 2005, 2007 and 2009 sessions. I was trying
24 to figure out which of these cases might have been
25 prevented by the passage of any of those pieces of



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1 legislation.

2 All three of those pieces of legislation
3 are slightly different, but let's just --

4 MR. DYER: Right.

5 REP. ANCHIA: But let's just stipulate
6 that they are materially similar, if that's okay, to
7 where there would be a preference stated for a photo
8 identification standard.

9 So I look a look at this Harris County
10 case because I was very interested in it. It occurred
11 in the Democratic primary, 2008 Democratic primary, and
12 correct me if I'm wrong, but the fact pattern was that
13 Jack Carol Crowder went to vote in a Democrat primary.
14 He, in fact, showed up, did not have his voter
15 registration certificate because he was not registered
16 to vote at that particular location.

17 His father, however, was, so that would be
18 Jack Carol Crowder, Jr. -- was, in fact, registered to
19 vote but had deceased about a year earlier, deceased in
20 2007.

21 Jack Carol Crowder, III went ahead and
22 voted in that election, signed his name in the poll book
23 and apparently gave some form of ID. It's unclear what
24 he provided, but in order to sign in the poll book, you
25 have to furnish some sort of ID. And their names were



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1 the same. Their addresses were the same, and the only
2 thing that was different was the date of birth. That
3 was like the one piece of data in the poll book that
4 might have led the person to conclude that -- that Jack
5 Carol Crowder, III was not eligible to vote in that
6 election, but nonetheless, he voted. He was charged
7 with a felony, as the record stated, and then I guess
8 pled down to a misdemeanor. Are those facts generally
9 correct in your mind?

10 MR. DYER: Generally speaking, yes. I
11 mean, I don't know what kind of information he showed,
12 and, I mean, you may have referenced he showed some
13 level of a voter registration card, and I don't know
14 that.

15 REP. ANCHIA: No, I said he did not show
16 a voter registration card, right.

17 MR. DYER: From what I know from the
18 information I sent to your office, it looks like he was
19 not registered to vote and he voted, and so he was
20 charged under 64012, and from what I can tell, it looks
21 like he did plead it down to some sort of misdemeanor.

22 REP. ANCHIA: Right. And I did see in
23 the affidavit that was provided by the officer who
24 investigated the case that Jack Carol Crowder, III said
25 he wasn't sure if he was registered to vote, he thought



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1 he might be. It turns out he wasn't. He had checked,
2 when he got his driver's license, he had checked that he
3 did not want to register to vote. I guess was motivated
4 to go in and vote, showed some form of voter ID, that's
5 why they would have asked him to sign the poll book,
6 right, which is what he did. We're trying to figure out
7 what that is, whether it was a state ID or a driver's
8 license or some other form of ID.

9 MR. DYER: Right, and from my side, I
10 don't know that if that information is available. If it
11 is, I can --

12 REP. ANCHIA: We're looking for it too,
13 we're looking for it too, but that's the one case that
14 we've been able to see of voter impersonation, and if,
15 in fact, Jack Carol Crowder, III had furnished a state
16 ID or a driver's license, that fact pattern would have
17 been prevented by the photo ID bills that we've seen
18 introduced in the legislature. Is that your
19 understanding based on, again, if we can stipulate that
20 the three bills were substantially similar.

21 MR. DYER: Is my time up?

22 REP. ANCHIA: That may be my time up. I
23 felt a buzz in my seat.

24 MR. DYER: I'm sorry, if you could ask
25 that again.



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1 REP. ANCHIA: No, that's okay. So based
2 on your general understanding of the terms included in
3 the statute, in the -- excuse me -- in the proposed
4 bills during the 2005, 2007, 2009 sessions, if Jack
5 Carol Crowder, III had, in fact, presented his state ID
6 or his driver's license, would that type of voter
7 impersonation fraud been prevented by any of the bills
8 that were proposed?

9 MR. DYER: It's hard to say with any kind
10 of definitiveness. I mean, I guess the question is if
11 the law requires him to show his driver's license.

12 REP. ANCHIA: Uh-huh.

13 MR. DYER: And he walks in with his
14 driver's license.

15 REP. ANCHIA: Uh-huh.

16 MR. DYER: Based on that fact alone, it
17 seems he may have complied with that provision of the
18 law. With that being said --

19 REP. ANCHIA: Clearly there was illegal
20 voting, right?

21 MR. DYER: Clearly.

22 REP. ANCHIA: You know, and I looked at
23 the mens rea, right, and he pled at the fact that he was
24 not eligible to vote and he voted, but I mean, it was
25 the same name, same address, same gender in the poll



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1 book. The one thing that the poll workers did not catch
2 in that situation was date of birth.

3 MR. DYER: Right.

4 REP. ANCHIA: You know, the father was
5 significantly older than the son, and that might have,
6 that might have stopped him from voting, but otherwise,
7 he signed the poll book using his name.

8 I just -- I'm always trying to figure out
9 instances or fact patterns that would give rise or that
10 would support the need for photo ID in terms of the
11 voter fraud that we see here, so I was just really
12 curious about this case. I mean, I said, "Okay, here's
13 a case of in-person voter impersonation, we're going to
14 really take a look at it." And then when I looked at
15 it, I said, "This might not be the smoking gun that I
16 thought it might be." This, in fact, might be someone
17 who presented a state ID or driver's license and signed
18 the poll book, and it was a poll worker. Two things I
19 think happened here. One, the deceased father was still
20 on the rolls.

21 MR. DYER: Right.

22 REP. ANCHIA: Well, yes, he was still on
23 the rolls. I pulled the poll book. And then, two, the
24 poll worker didn't notice that the date of birth was
25 materially, that this person could not have been, even



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1 though they had the same name, same address, same
2 gender, were not the exact same person.

3 It's a clearly mistake that someone could
4 make in haste or something like that, but not the
5 situation that I thought would really be the smoking gun
6 that we would be looking for, you know, to justify them,
7 the photo identification.

8 MR. DYER: And whether it is or it is
9 not, I'll obviously leave to others, but whether that
10 justifies any kind of given piece of legislation or not
11 is obviously --

12 REP. ANCHIA: That's not your purview,
13 yes, right.

14 MR. DYER: I think that a prosecutor
15 would tell you that any kind of a tool that might help
16 him to identify someone who is committing some sort of
17 an illegal act and it can, in turn, lead to admissible
18 evidence at a criminal trial is a tool that they could
19 use. Always and in every instance, probably help in
20 some cases more than others, certainly possible.

21 REP. ANCHIA: Okay.

22 CHAIRMAN: I wasn't clear on this. Is
23 the case that he's talking about one of the nine illegal
24 voting cases that you earlier referred to?

25 MR. DYER: One of the nine that's been,



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1 I'll say resolved, taken to resolution, yes, sir, one of
2 the nine.

3 CHAIRMAN: All right. Representative
4 Harper-Brown.

5 REP. HARPER-BROWN: Yes. Thank you,
6 Mr. Chairman, but in that instance, if we had a system
7 that was similar to the system they have in Mexico,
8 where not only do they have a voter ID but they have the
9 photograph at the polling location of the person to
10 vote, then he probably wouldn't have been able to vote
11 if the worker could have pulled up his photo at the same
12 time he was verifying his registration, since he didn't
13 have his voter ID or his voter registration card.

14 MR. DYER: If that's how they do it, that
15 certainly might make it easier, but I don't know how --
16 I'm not familiar with their system. I'm just not
17 prepared to elaborate.

18 CHAIRMAN: Continue. Are you done?

19 MR. DYER: No, sir, I'm just here
20 answering questions.

21 CHAIRMAN: Okay. All right. Any other
22 questions, members, of this witness?

23 All right. Thank you.

24 MR. DYER: Thank you all.

25 CHAIRMAN: At this time, the Chair calls



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1 Ann McGeehan with the Secretary of State's office. Good
2 morning.

3 MS. MCGEEHAN: Good morning. I'm Ann
4 McGeehan, with the Secretary of State's office. I
5 thought that first I would address the part of the
6 charge that talks about the study of the new laws in
7 other states.

8 Ken Beall, one of our staff attorneys,
9 has prepared a 50 state chart survey. It's in your
10 packet, and so I won't go through that entire survey, of
11 course, but out of the 50 states, 27 states, including
12 Texas, require some form of identification in order to
13 vote. Twenty-three states do not require a voter to
14 present ID before voting.

15 Out of the 27 states that require some
16 form of identification, 11 states require photo ID, and
17 within those 11, some of those states will give an
18 option for a voter to sign an affidavit if they do not
19 have the photo ID present with them when they're
20 presenting themselves to vote.

21 REP. ANCHIA: Repeat that again, that
22 last figure.

23 MS. MCGEEHAN: The last figure is 11
24 states require photo ID.

25 REP. ANCHIA: And how many allow for the



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1 affidavit as a form of ID?

2 MS. MCGEEHAN: I did not count that up.
3 They're all a little bit different. It's in the charts
4 though. One of the columns in the charts talks about
5 affidavits. I could go back --

6 Let me go back and get you the specifics
7 in that.

8 REP. ANCHIA: If it's in the chart,
9 thanks.

10 CHAIRMAN: And Ann, just to the clear,
11 the affidavits, how does that work? Sign something that
12 says, "I don't have a photo ID but I am Todd Smith?"

13 MS. MCGEEHAN: Right. And they're all --
14 I mean, each state is a little bit different. Some of
15 them you sign an affidavit, then you have to present
16 evidence within five days, you know, proof of
17 identification. You go back to an election official
18 within five days.

19 CHAIRMAN: So the general rule is you
20 have to show up with the photo ID within a certain
21 period of time; you still have to have a photo ID
22 after you sign the affidavit?

23 MS. MCGEEHAN: Well, this is only within
24 those states that require photo ID.

25 CHAIRMAN: Exactly, I understand.



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1 MS. MCGEEHAN: Okay.

2 CHAIRMAN: Yes, I understand. Of those
3 11 states, there's a certain number that have an
4 affidavit option.

5 MS. MCGEEHAN: Right.

6 CHAIRMAN: In those states that have that
7 affidavit option, is it just --

8 What do you have to present within a cure
9 period?

10 MS. MCGEEHAN: It's very different from
11 state to state. New Mexico, I think it's very simple.
12 You just sign a statement stating your name, date of
13 birth and residence. Florida --

14 CHAIRMAN: And then you don't have to
15 cure at all --

16 MS. MCGEEHAN: Right.

17 CHAIRMAN: In New Mexico?

18 MS. MCGEEHAN: And I think it's the same
19 in Michigan. You know, they're very, very different.
20 You know, each state has kind of addressed this in a
21 very different way.

22 CHAIRMAN: Okay.

23 MS. MCGEEHAN: In some states, Georgia,
24 you have to have photo ID; Florida, you have to have the
25 photo ID.



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1 CHAIRMAN: And they do have a cure
2 period, if you happen to show up without one.

3 MS. MCGEEHAN: Right.

4 CHAIRMAN: You have a certain number of
5 days to be able to come back with one.

6 MS. MCGEEHAN: And then you have to show
7 that --

8 CHAIRMAN: Photo ID.

9 MS. MCGEEHAN: -- appropriate government
10 issued ID.

11 CHAIRMAN: Okay.

12 MS. MCGEEHAN: I know you're all very
13 familiar with the law in Texas. Of course, we require
14 identification but it doesn't have to be photo ID. The
15 law assumes that the voter is going to present their
16 voter registration certificate, but if they don't have
17 the certificate, then they can present one of about, oh,
18 let's see, seven or so items that are allowed for in
19 state law. That includes driver's license, any form of
20 identification, including the person's photo, a birth
21 certificate, citizenship papers, passport, official mail
22 addressed to the person by a governmental entity, a copy
23 of a current utility bill, bank statement, government
24 check, pay check or other government document that shows
25 the name and address of the voter, and then the law also



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1 allows the Secretary of State to prescribe other
2 permissible forms of identification, but we have not at
3 this time.

4 Since the 81st legislative session, two
5 states have passed new laws which require ID for voting,
6 and again, it kind of reflects just the variety that's
7 out there.

8 Idaho, effective July 1st, will require
9 photo ID but they allow for same day registration at the
10 polls if the voter presents a valid photo ID and proof
11 of residence at the polls.

12 Utah passed a law that became effective
13 last May, which requires a photo ID or two other kinds
14 of ID, but Utah gives the voter a five day period to
15 present proof of ID to an election official if they
16 don't have it on election day.

17 On the litigation front --

18 CHAIRMAN: So that would be one photo,
19 two non-photos, with a five day cure, where you can
20 present either the photo or the two non-photos?

21 MS. MCGEEHAN: That's right.

22 CHAIRMAN: Okay.

23 MS. MCGEEHAN: On the litigation front,
24 of course, in April of 2008, before you last met in
25 regular session, the U.S. Supreme Court ruled, in the



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1 Crawford vs. Marion County case, that the Indiana voter
2 ID law was constitutional and that the state's interest
3 were sufficiently weighty to justify any limitation
4 imposed on voters.

5 However, in 2009, there was a state court
6 challenge in Indiana on the same law, and an Indiana
7 court of appeals struck the law down on the grounds that
8 the ID law regulates voters in a manner that is not
9 uniform and impartial because voters that vote by mail
10 aren't require to present proof of identity but a voter
11 that votes in person must present proof of identity.
12 That case is on appeal and it's pending before the
13 Indiana Supreme Court, but it's our understanding that
14 the state is still enforcing and requires photo ID
15 before a voter is permitted to vote.

16 That's the overview on the, kind of the
17 big overview on the 50 states, and I would be happy to
18 give any more detail, or if you want specific copies of
19 the state law, I would be happy to get that for you. Of
20 course --

21 Yes?

22 CHAIRMAN: In terms of states that have
23 what we would characterize as hard photo ID's, in other
24 words, you have to present a photo ID, you may be able
25 to present it five days after the election if you don't



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1 have it on election day, but you have to present one.

2 MS. MCGEEHAN: Uh-huh.

3 CHAIRMAN: Do you know, off the top of
4 your head, what states we're talking about -- Indiana,
5 Georgia, Florida?

6 MS. MCGEEHAN: Yes.

7 CHAIRMAN: Anybody else that's joined
8 that party?

9 MS. MCGEEHAN: Yes. There are 11 states
10 now that are in that group.

11 CHAIRMAN: Well, I don't consider a state
12 that says you just sign an affidavit that says I'm Todd
13 Smith and you don't have to do anything else.

14 MS. MCGEEHAN: Okay.

15 CHAIRMAN: If you don't have a photo ID,
16 to be a hard photo ID. I'm talking about a state where
17 you have to present a photo ID in order for your vote to
18 count either at the polls or within a few days after the
19 polls. Do you know?

20 MS. MCGEEHAN: Well, I think even
21 Georgia, and they're, you know, pretty strict law, they
22 do allow the voter to come in up to two days after the
23 election and present ID.

24 CHAIRMAN: A photo ID?

25 MS. MCGEEHAN: Yes.



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1 CHAIRMAN: That's what I'm talking about.
2 I'm trying, if possible, to determine what the universe
3 of states where there is not any voter whose vote does
4 not count, whose vote counts unless they present a photo
5 ID. In other words, you have to have one or your vote
6 does not count, and you can present it at the polls or
7 you can present it within five days if you forget it on
8 election day, but you have to have one or your vote
9 doesn't count.

10 MS. MCGEEHAN: Yes, I think clearly
11 Florida, Georgia, Idaho now.

12 CHAIRMAN: And I guess even that's not
13 even true really of Indiana, because they had exceptions
14 in Indiana, religious objectors. I don't remember all
15 the exemptions, but that's correct, isn't it? That
16 really even Indiana wouldn't fit into that category?

17 MS. MCGEEHAN: Yes. To be honest, I'm
18 not familiar with the exceptions in the Indiana law.

19 CHAIRMAN: Okay. Well, let's just -- I
20 know from past experience that Indiana and Georgia and
21 Florida are the states that sort of tend to come up. We
22 will leave aside what's happened since then or which
23 other states may be similar to that now.

24 I mean, what I was trying to determine,
25 and I don't know if you're the one or maybe Jay is still



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1 here from the Attorney General. Did he sneak out?

2 MS. MCGEEHAN: Yes.

3 CHAIRMAN: Okay. Is whether there are
4 any states that have what would generally be
5 characterized as a hard photo ID that are voting rights
6 states that obtained approval of their hard photo ID
7 bill through either the Obama justice department or the
8 district court in Washington, D.C.

9 In other words, if we passed a photo ID
10 bill in Texas this session, it has to go through one of
11 those two places.

12 MS. MCGEEHAN: Right.

13 CHAIRMAN: Indiana is not a voting rights
14 state, didn't have to have pre-clearance. I believe,
15 and I'm still from the process of trying to get this
16 confirmation, Georgia and Florida are.

17 MS. MCGEEHAN: Yes. Well, Georgia
18 definitely is. Florida, I think, not the state isn't
19 but some of the jurisdictions are covered, but the state
20 as a whole is not covered.

21 CHAIRMAN: Georgia was pre-cleared
22 through the Bush justice administration, I know that,
23 and I'm not sure about Florida. Do you know?

24 MS. MCGEEHAN: Well, Florida's law was in
25 place for the '09, for your session because you had the



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1 state election director come. I don't know how old it
2 is though. It may be the fourth, George Bush justice
3 department, may be earlier.

4 CHAIRMAN: Well, the last information I
5 saw said that Florida -- I don't know if you know the
6 answer to this, Steven, but was a partial voting rights,
7 and I don't know what that means in term of how they got
8 or whether they had to get pre-cleared.

9 MS. MCGEEHAN: It means their state laws
10 don't need to be pre-cleared, but if the jurisdiction
11 makes any change, like a county makes a change, certain
12 counties are covered.

13 CHAIRMAN: So Florida is a partial voting
14 rights state and they passed a state voting act law,
15 then you -- they don't have to be pre-cleared at all.

16 MS. MCGEEHAN: That's my understanding.

17 CHAIRMAN: So the three that we typically
18 refer to, the only one who has had to be pre-cleared,
19 that was pre-cleared, went through the Bush justice
20 department, is that correct?

21 MS. MCGEEHAN: In Georgia, yes.

22 CHAIRMAN: Okay. Thank you.

23 MS. MCGEEHAN: All right. Okay. Okay,
24 the other part of the charge, of course, directs the
25 committee to examine prevalence of fraud in Texas. And



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1 I'll share the data that we have, but just as Jay Dyer
2 noted, I need to similarly note that it's not
3 necessarily indicative of the entire set of data on
4 election fraud. We only get what's reported to our
5 office, and, of course, a lot is reported locally and
6 probably some of it goes unreported as well.

7 Citizens can either file a criminal
8 complaint with their local district attorneys to
9 registered voters, file a complaint, they have that
10 option under the election code, or they can file a
11 complaint with the Secretary of State's office. We
12 review it and if, on its face, and it has to be in
13 writing, but if it represents facts which establish
14 criminal violations of the election code, then we will
15 make a referral to the Attorney General's Office.

16 Since the last legislative session, we
17 have made -- we made 14 referrals to the office of the
18 Attorney General in 2009 and 10 referrals so far in
19 2010. And of the 24 referrals, two of them involve --
20 at least two of them involve allegations of voter
21 impersonation.

22 We also receive many complaints through
23 our toll free line, but not all of those --

24 We try to track all complaints and try to
25 make, have an effort in place to write down all



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1 complaints, but sometimes some complaints may come
2 through, and in these informal complaints that come
3 through, we've had some potential voter impersonation
4 complaints as well.

5 Since the last session, I thought I'd
6 highlight two changes that our office has made in the
7 areas of trying to combat fraud.

8 CHAIRMAN: Before you move on real quick
9 and do that --

10 MS. MCGEEHAN: Sure.

11 CHAIRMAN: I want to ask you just about
12 what you just said. Of the two allegations that
13 involved voter impersonation, was there some level of
14 scrutiny that your office engaged in before you referred
15 them on? And if so, to what extent?

16 MS. MCGEEHAN: Well, we require that a --
17 In order to make a referral to the Attorney General, we
18 must receive a written complaint, it must be signed, and
19 they must present some factual evidence of a crime.
20 They can't just say, "We think the primary was wrong."
21 They need to have specific facts.

22 We encourage folks to send us as much
23 detail as possible, and I think the two instances that
24 involve voter impersonation, we had a fair amount of
25 accompanied material, you know, sign-in sheets, things



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1 of that nature that was sent along with the complaint,
2 forwarded to the AG's office.

3 CHAIRMAN: So if there's a poll worker
4 that says I saw some guy walk in, you know, same guy,
5 same clothes, same person on the same day, and they're
6 just saying this and they're swearing to it, is that the
7 kind of complaint you're talking about? Is that
8 typical?

9 MS. MCGEEHAN: Although typically they
10 probably don't come from the poll workers, typically
11 they probably come from, you know, maybe a --

12 REP ANCHIA: Campaign?

13 MS. MCGEEHAN: Campaign. Or we've had a
14 couple recently from the press, where the press has been
15 doing some investigations.

16 REP ANCHIA: Are they sworn complaints?

17 MS. MCGEEHAN: No. Some of them are but
18 we don't require that they be sworn.

19 REP. ANCHIA: Do you know if either of
20 the impersonation cases you referred to were sworn?

21 MS. MCGEEHAN: I don't know.

22 REP. ANCHIA: And you referred both of
23 them?

24 MS. MCGEEHAN: Yes.

25 REP. ANCHIA: And what was the vintage of



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1 those cases?

2 MS. MCGEEHAN: Well, one of them was the
3 Harris County case that you and Jay Dyer just discussed,
4 and the other one involved the city of Progresso.

5 REP. ANCHIA: The Progresso cases?

6 MS. MCGEEHAN: Uh-huh.

7 REP. ANCHIA: And it's my understanding
8 that those have been successfully prosecuted but not on
9 voter impersonation. I wish we had Jay back here, but
10 they were illegal voting but -- I think they were
11 selling votings, is what I recall.

12 MS. MCGEEHAN: Yes, once we made that
13 referral, we don't get any formal communication back, so
14 I don't know how those were resolved.

15 CHAIRMAN: While I've got you, is it fair
16 to say most of the referrals you make involve absentee
17 ballots?

18 MS. MCGEEHAN: I would say maybe about
19 half. It's a fair number but it's not the only thing
20 that's referred.

21 CHAIRMAN: And so obviously the other
22 half that's made up of impersonation fraud, what would
23 be the second largest category?

24 MS. MCGEEHAN: It's really assorted. I
25 mean, bribery of the voter, electioneering, voting more



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1 than once.

2 REP. ANCHIA: Can you rank those in terms
3 of incidences, mail-in ballot, fraud being obviously 50
4 percent?

5 MS. MCGEEHAN: Yes; several of them, the
6 subject matter is just illegal voting, so there could be
7 a lot included in that. Voter intimidation. I have two
8 briberies.

9 CHAIRMAN: Is there something about mail-
10 in ballot fraud that is easier to detect, more likely to
11 be caught, than impersonation fraud?

12 MS. MCGEEHAN: That's a tough question, I
13 mean, because early voting by mail, you have less
14 safeguards because it's in the privacy of a voter's home
15 so you don't have election officials present. There
16 have been recent changes to the law though which require
17 more documentation so that everybody that -- you know,
18 any person that helps the voter complete their
19 application for ballot by mail or helps them vote a
20 ballot has to, you know, document it, so that is
21 helping, I think, in prosecution in finding kind of that
22 chain of custody.

23 CHAIRMAN: So sort of some information
24 that weighs both ways? More documentation required, and
25 therefore, perhaps greater potential for some sort of



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1 discovery of fraud? On the other hand, it occurs in the
2 privacy of your home rather than in the presence of
3 officials and so that might actually weigh the other
4 way?

5 MS. MCGEEHAN: Right, but voter
6 impersonation, that would probably be something tough
7 for election officials to detect.

8 CHAIRMAN: Yes, but in terms of
9 determining the relative toughness, the only have strong
10 feelings about whether you're more likely to get caught
11 if you attempt absentee ballot fraud versus
12 impersonation fraud.

13 MS. MCGEEHAN: I'm not sure how to answer
14 that one right.

15 CHAIRMAN: Clearly the preponderance of
16 the prosecution relates to absentee ballot as against
17 impersonation fraud. I'm trying to determine what that
18 means.

19 Is that an indication of that the greater
20 preponderance of the actual fraud is absentee ballot
21 fraud or is there an indication of being some sort of
22 difference in the likelihood of being caught versus
23 engaging in one sort of fraud versus the other sort of
24 fraud.

25 MS. MCGEEHAN: That's a hard one to



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1 answer. I would be calling for an opinion and I don't
2 feel comfortable giving that.

3 CHAIRMAN: Okay.

4 REP. HARPER-BROWN: Mr. Chairman.

5 CHAIRMAN: Rep. Harper-Brown.

6 REP. HARPER-BROWN: Thank you,
7 Mr. Chairman. Could you define impersonation for me?

8 Does impersonation include someone voting
9 that is not a voter or is it when they are using some
10 other person's ID to vote?

11 MS. MCGEEHAN: The way it's defined in
12 the election code is when a person is impersonating
13 another registered voter. They themselves are not
14 registered but they are impersonating an eligible
15 registered voter. That's under the offense of illegal
16 voting.

17 REP. HARPER-BROWN: And so when the rolls
18 are set, the election rolls, voting rolls, do you verify
19 that these people legally have the right to vote when a
20 person registers?

21 MS. MCGEEHAN: There are several
22 validations that are done when a person registered, but
23 they don't -- it does not determine all eligibility
24 requirements, so what happens is the county reviews the
25 application first, makes sure the resident is in the



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1 county. Then that is sent to the Secretary's of State's
2 office.

3 We validate whether that driver's license
4 really is the driver's license of that person. If the
5 voter applicant hasn't submitted a driver's license but
6 they've submitted a Social Security number instead, we
7 validate that that's the right Social Security number
8 for that voter.

9 That's what we do up front to get, as far
10 as getting a person registered. Now once a person is
11 registered in the data base, there are other things we
12 do periodically, so weekly we get information on finally
13 convicted felons from DPS. We run that against a
14 statewide list. We get information on deaths from the
15 Bureau of Vital Statistics. We run that against the
16 data base. We don't have any systematic way to verify
17 citizenship status, but the district clerks do on a
18 monthly basis provide lists to the voter registrars of
19 persons who were excused for jury service because they
20 weren't U.S. citizens.

21 REP. HARPER-BROWN: But if they haven't
22 been excused, then we're not verifying -- there's really
23 not away to verify citizenship?

24 MS. MCGEEHAN: No.

25 REP. HARPER-BROWN: Okay. So how would



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1 you know that someone was impersonating another voter?
2 How easy would it be for that poll worker or for someone
3 to know that they were impersonated?

4 MS. MCGEEHAN: I think it would be very
5 hard unless the poll worker knew everybody in his
6 precinct, some tiny community, but in most cases, it
7 would be difficult.

8 REP. HARPER-BROWN: So then it would be
9 difficult to quantify whether there is excessive voter
10 fraud or impersonation or whether there is minor. I
11 mean, you really can't prove it either way because
12 there's not a way to know, unless like you said, they
13 know every person coming in.

14 MS. MCGEEHAN: Right. Right.

15 REP. HARPER-BROWN: And then -- and you
16 only investigate on complaints?

17 MS. MCGEEHAN: Correct. And we don't
18 investigate, to make that clear. We just sort of get
19 the facts and then refer it.

20 REP. HARPER-BROWN: Now one of the other
21 questions, because one of the things that was mentioned
22 in some of the problems that's been happening in Dallas
23 County was about the mail-in ballot itself.

24 The mail-in ballot, does it contain all
25 the information for that election and for which election



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1 they're voting in? Do you know that?

2 MS. MCGEEHAN: Yes, it's specific to the
3 election.

4 REP. HARPER-BROWN: Okay, that's what I
5 thought, but one of the complaint was that they could
6 use think that there was any way that they could do
7 that.

8 MS. MCGEEHAN: Well, there's one
9 exception, and that's for the primary, so the complaints
10 were out of the primary, if the person requests the
11 ballot in the primary, they can also request to
12 automatically receive a ballot by mail for the run-off.
13 So that might by what was discussed.

14 REP. HARPER-BROWN: Okay.

15 MS. MCGEEHAN: One application was
16 requested for both elections.

17 REP. HARPER-BROWN: Okay.

18 MS. MCGEEHAN: But the ballot itself --

19 REP. HARPER-BROWN: The ballot itself is
20 very specific to that election?

21 MS. MCGEEHAN: Yes.

22 REP. HARPER-BROWN: Okay, that's what I
23 thought. All right. Thank you.

24 CHAIRMAN: So I want to just, to kind of
25 make sure I'm as far as we can get on this kind of



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1 question to the extent to which there is a difference,
2 if at all, between the likelihood of getting caught,
3 committing absentee ballot fraud versus impersonation
4 fraud, and what Representative Harper-Brown just
5 indicated was that basically somebody has to turn you in
6 if you walk up to the polls and say I am John when you
7 are really Ted, or you, John, you say you're John when
8 you're really Ted, and then after you vote, John shows
9 up, or before you have voted, John has already voted, I
10 guess those are two ways I can imagine off the top of my
11 head to be caught, and impersonation fraud is you have
12 somebody else know about it, turn you in, or the person
13 you're impersonating actually votes before or after you
14 do.

15 REP. ANCHIA: Mr. Chairman, there's one
16 other thing, just to clarify that, in the case of Jack
17 Crowder, he voted for someone who was deceased at the
18 time, and when there was an audit of the rolls, they saw
19 hey, well, this person that voted is deceased, they did
20 a little more investigation and that's how they found
21 it.

22 CHAIRMAN: Okay. And that's what you
23 just referred to, where you compare the rolls
24 periodically to determine who was deceased?

25 MS. MCGEEHAN: Right.



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CHAIRMAN: What would prompt -- I guess in that case where he was deceased, what would prompt somebody to question?

Would it be because you do this automatic comparison of the rolls and somehow somebody noticed that somebody had voted before the person was taken off the rolls as being deceased but yet after the date which they were deceased?

MS. MCGEEHAN: Excuse me. I mean, I guess the public records would certainly allow somebody to do that kind of investigation. In that specific case, the process that we received -- you know, obviously the father's name stayed on the rolls past time, you know, he died in '07 apparently and he's still on the rolls in the spring of '08. And so there are some limitations on getting that information from the Bureau of Vital Statistics. It can be up to six months old, for one thing, and we have to be matched based on Social Security numbers, so unless we have a good match, we are very hesitant to label someone has possibly deceased. You know, you don't want to cancel someone who's very much alive and eligible to register to vote, so unfortunately, the two data bases that the Bureau of Vital Statistics database is not so easy to compare against the statewide list of registered voters because



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1 some of the matching criteria is not the same. We don't
2 have driver's license numbers in the Bureau of Vital
3 Statistics data base.

4 REP. ANCHIA: And Mr. Chairman, I think
5 that the audit didn't occur at the Secretary of State's
6 level but at the local level. I think the county did
7 the match, if I'm not mistaken.

8 MS. MCGEEHAN: It could be. The county
9 can also receive information locally, which may be
10 quicker than getting it from Bureau of Vital Statistics.

11 REP. CHAIRMAN: So if granddad dies, I
12 have his voter registration card. I'm really, you know,
13 interested in election so I'd rather vote twice rather
14 than once. The only way that's going to be caught, on
15 that issue anyway, is if there's some kind of
16 independent effort on the part of the local government
17 to do some sort of audit?

18 MS. MCGEEHAN: That and the fact, I
19 guess, that they are public records, so generally what
20 happens, the campaign scrutinizes all the records after
21 a close election, but as far as a systematic audit, that
22 would be up to locals to initiate that.

23 REP. CHAIRMAN: But even if I do vote for
24 grand-dad because he's dead and I've got his voter
25 registration card and there's some kind of subsequent



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1 audit that determines that someone voted with grandad's
2 voter registration card, how are they going to tie it to
3 me?

4 MS. MCGEEHAN: It probably would be very
5 difficult to tie it to you.

6 CHAIRMAN: Yes, they can't find me.

7 MS. MCGEEHAN: Yes, you signed as him and
8 there would be no way to track it back to you.

9 CHAIRMAN: So how do we catch people with
10 absentee ballot fraud? Is it the same thing? Do we
11 have person that turn them in that know about it? Do
12 you have a sense on that?

13 MS. MCGEEHAN: Sometimes folks are turned
14 in, sometimes voters themselves feel -- sometimes there
15 can be aggressive campaigns, come to a person's home,
16 and a lot of times the voters are elderly, they'll let
17 somebody in. Sometimes they get pressured into voting a
18 certain way. That campaign worker leaves and then the
19 voter thinks twice and like, "Well, I really didn't want
20 to vote for candidate X," and then they'll try to cancel
21 their ballot. Or like your similar example, they'll
22 show up to vote on election day but the poll list is
23 marked having that that person voted earlier, and the
24 voter says, "But I didn't vote early," and that's an
25 indication that something is going on.



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1 CHAIRMAN: Okay. So a lot of times the
2 voter themselves report absentee ballot fraud.

3 MS. MCGEEHAN: Yes.

4 CHAIRMAN: On them?

5 MS. MCGEEHAN: Yes, and in addition to
6 campaigns. Campaigns will also have obviously a vested
7 interest in wanting to research that.

8 CHAIRMAN: Representative Anchia?

9 REP. ANCHIA: I'll defer.

10 CHAIRMAN: Okay, Dr. Allen.

11 REP. ALLEN: An incident of inside voter
12 fraud, what I consider inside the polling place, i.e.,
13 it's a slow day at the polling place so the precinct
14 judge takes the liberty to vote for a few of my
15 neighbors who did not show up at the polls, or I know
16 will not show up. Have you ever had that kind of fraud
17 before?

18 MS. MCGEEHAN: We have had that
19 allegation before. I don't know that it was ever proved
20 out, but no, not too often, but I can remember that
21 allegation coming up in the past, at least several
22 times.

23 REP. ALLEN: Several times. Was it
24 Houston?

25 MS. MCGEEHAN: I think it was Houston.



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USA_00018071

1 CHAIRMAN: Representative Anchia?

2 REP. ANCHIA: I wanted to follow up on
3 the Chairman's sort of line of questioning about trying
4 to get at the incidence of one type of fraud versus the
5 other, mail-in versus in-person, the type of
6 impersonation that the photo ID bills of the last three
7 sessions have tried to drive at, because none of those
8 three bills, to your knowledge, has included a photo ID
9 requirement for mail-in ballots, correct? 2005, 2007?

10 MS. MCGEEHAN: I don't recall that being
11 --

12 REP. ANCHIA: As far as you can remember?

13 MS. MCGEEHAN: Right.

14 REP. ANCHIA: So we do have about 50
15 percent of your complaints have been mail-in ballot
16 fraud, correct, that you testified to that before?

17 MS. MCGEEHAN: Right.

18 REP. ANCHIA: Yet the photo
19 identification bills of the last three sessions did not
20 include any sort of photo identification for mail-in
21 ballots, correct?

22 MS. MCGEEHAN: That's my memory.

23 REP. ANCHIA: Okay. That's my memory
24 too.

25 When we talk about the difference in



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1 deterring, potential deterrents for fraud, what is the
2 penalty for a person showing up at the polls with
3 someone else's voter registration certificate and trying
4 to vote their ballot? It's two to ten in jail and
5 \$10,000 fine, is that right?

6 MS. MCGEEHAN: I know it's a felony. I
7 don't know specifically what the punishment is on that.
8 I could look it up.

9 REP. ANCHIA: And the person would be
10 showing up in front of, in front of whom typically?

11 MS. MCGEEHAN: In front of the poll
12 worker, the election judge or election clerk at the
13 polls.

14 REP. ANCHIA: Potentially witnesses
15 there?

16 MS. MCGEEHAN: Yes.

17 REP. ANCHIA: Would those deterrents,
18 those witness be available in a mail-in ballot
19 scenario?-

20 Is there a judge that oversees mail-in
21 ballots; that is, goes to a person's home and witnesses
22 that, witnesses a person signing?

23 MS. MCGEEHAN: No. I mean, you know, the
24 early voting clerk, all that is either at the county or
25 the city, so once the ballot is mailed, the only folks



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1 that might be at the voter's home would be relatives or
2 friends or something like that.

3 REP. ANCHIA: Or nobody?

4 MS. MCGEEHAN: Right.

5 REP. ANCHIA: So it could be completely
6 anonymous?

7 MS. MCGEEHAN: Right.

8 REP. ANCHIA: In terms of the
9 scaleability of a type of fraud, which is something that
10 always interests me why anyone would subject themselves
11 to two to ten in jail and \$10,000 fine to change one
12 vote, it is easier, you've probably gotten complaints
13 about mail-in ballot fraud being on a large scale,
14 correct, vis-a-vis voter impersonation?

15 Let me back up. I'll ask it in nuggets.

16 MS. MCGEEHAN: Okay.

17 REP. ANCHIA: Have you received
18 complaints about large scale mail-in ballot fraud?

19 MS. MCGEEHAN: Large scale meaning more
20 than just one or two?

21 REP. ANCHIA: More than five.

22 MS. MCGEEHAN: Yes.

23 REP. ANCHIA: Okay, have you received
24 complaints of large scale voter impersonation fraud, the
25 type of voter impersonation that would be remedied by



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1 the photo ID bills that we've seen in the legislature,
2 more than five?

3 MS. MCGEEHAN: Well, I mean, based on the
4 referrals that were made to the Attorney General, which
5 again, is not the full picture of everything going on in
6 the state, you know.

7 REP. ANCHIA: On a per-instance basis.

8 MS. MCGEEHAN: Out of the I guess 24
9 referrals that we've made in the last two years, two
10 clearly involved allegations of voter impersonation.

11 REP. ANCHIA: And how many of those
12 involve more than -- again, I'm trying to get at the
13 scaleability.

14 MS. MCGEEHAN: Right. I think that one
15 of them did involve several voters. It wasn't just a
16 single act.

17 REP. ANCHIA: Was it more than five
18 voters?

19 MS. MCGEEHAN: I don't remember. We
20 would have to pull that case. I'm pretty sure it was
21 the City of Progresso.

22 REP. ANCHIA: Right, it was a Progresso
23 case, right?

24 MS. MCGEEHAN: Yes.

25 REP. ANCHIA: Okay. So I mean, we're



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1 trying to get at the incidence of a particular type of
2 voter fraud. I mean, a corollary question is what is
3 the potential yield and what is the potential risk for a
4 campaign for an individual, right, so you --

5 Would you agree with me that the
6 potential yield versus risk, an anonymous process
7 potentially done alone in one's home versus someone,
8 versus an instance where you're showing up to change
9 potentially one vote in front of witnesses, do you see a
10 difference between the risk in yield in either of those
11 situations? The question is, do you see a difference?

12 MS. MCGEEHAN: Yes, there's differences
13 in risk but I hesitate to say that that somehow means
14 that there's more by mail fraud than voter impersonation
15 fraud, because we're dealing with limited data, so I
16 hate to make any kind of conclusion.

17 REP. ANCHIA: Right, we're dealing with
18 limited data but that's the data, that's the only data
19 we have, right? What else can we base our decisions off
20 of? I mean, I could flip a coin.

21 MS. MCGEEHAN: Yes. I mean, I guess the
22 local prosecuting authorities might have data. Election
23 contests filed in the state may have data on some of the
24 key issues as well. There might be other sources.

25 REP. ANCHIA: But there's probably no



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1 better data? I mean, do you think? Who would have more
2 data?

3 MS. MCGEEHAN: I think that's the
4 problem. It's very decentralized. To the extent that
5 we're the central authority for elections, we receive a
6 lot of it, but I hate to say that that represents the
7 universe.

8 REP. ANCHIA: How many votes have been
9 cast since 2002?

10 MS. MCGEEHAN: You gave me a heads-up on
11 that one.

12 REP. ANCHIA: Yes, I figured you texted
13 someone and got the answer.

14 MS. MCGEEHAN: Well, I didn't text, but
15 all I can tell you right now is over 20 million, and
16 it's probably higher than that, but just going back --

17 REP. ANCHIA: That's state and local or
18 just state?

19 MS. MCGEEHAN: That represents the
20 November general.

21 REP. ANCHIA: That's just for November
22 general.

23 MS. MCGEEHAN: November general.

24 CHAIRMAN: What was that, 20 million
25 what?



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1 MS. MCGEEHAN: Over 20 million votes cast
2 in the November general elections held in '08, '06, '04
3 and '02, and I'm saying it's over 20 million. We can
4 get you the specifics. It's all on our website.

5 CHAIRMAN: You're talking about the state
6 of Texas?

7 MS. MCGEEHAN: Well, there were 8 million
8 votes cast in 2008 for the presidential, and that was
9 one of our high water years for turn-out. There was
10 about 4 million, I think, in 2006.

11 CHAIRMAN: I thought you just told me
12 there were 20 million votes cast.

13 MS. MCGEEHAN: During those four general
14 elections, over 20 million votes cast.

15 CHAIRMAN: Okay, got you. Is that the
16 total over four years?

17 MS. MCGEEHAN: Yes.

18 CHAIRMAN: Okay. How many registered
19 voters are we again? Remind me.

20 MS. MCGEEHAN: Right at 13 million.

21 CHAIRMAN: 13, okay.

22 REP. ANCHIA: Just really quickly. In
23 those 20 million, just again, we're going back to 2002,
24 at least 20 million, and that's not local elections.

25 MS. MCGEEHAN: That's not local, that's



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1 not primary.

2 REP. ANCHIA: It's just general, it's not
3 primary. How many complaints total, just complaints,
4 unfounded, founded, referred, unreferred, how many
5 complaints since 2002?

6 MS. MCGEEHAN: Including complaints that
7 we have received, you know, on the phone, I can't
8 remember.

9 REP. ANCHIA: Look, you know, "My crazy
10 uncle, you know, doesn't have the mind to go vote and he
11 went to go vote." I mean, just anything, everything.

12 MS. MCGEEHAN: Well, I'm really
13 guesstimating here, but maybe between 500 to a thousand.

14 REP. ANCHIA: Okay. Lets take the big
15 number, a thousand.

16 MS. MCGEEHAN: Okay.

17 REP. ANCHIA: Could it be a bigger
18 number? Could it be 2000?

19 MS. MCGEEHAN: I don't think it would be
20 that big, at least as far as what we've tracked.

21 REP. ANCHIA: And again, these are un --
22 you know, these are the ones that you may refer on, the
23 ones you may screen.

24 MS. MCGEEHAN: Right.

25 REP. ANCHIA: We don't have enough



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1 information in 2000. Okay, let me ask you really
2 quickly about the states that have different systems
3 than Texas, because we have a voter ID standard
4 currently, correct?

5 MS. MCGEEHAN: Right.

6 REP. ANCHIA: Okay. And when you do not
7 have -- let's talk about Texas first and I'll get to the
8 other states.

9 When you do not have your ID, your voter
10 ID, under the current standard, you can vote using an
11 affidavit, correct? You sign a poll book that contains
12 an affidavit in it, correct?

13 MS. MCGEEHAN: Right, a person can vote a
14 provisional ballot. It is an affidavit. We used to
15 call it the challenge affidavit, now it's called the
16 provisional ballot, but it is, in fact, an affidavit.

17 REP. ANCHIA: I'm asking you about
18 something slightly different, right, and I never have my
19 voter registration certificate on me.

20 MS. MCGEEHAN: Oh, I'm sorry, I know what
21 you're asking now.

22 REP. ANCHIA: So I do not satisfy the
23 voter ID standard in the state of Texas when I go vote
24 because I do not have my voter registration
25 certificate. And instead, I sign an affidavit, correct?



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1 MS. MCGEEHAN: Right.

2 REP. ANCHIA: And I can present my state
3 ID or my driver's license, correct?

4 MS. MCGEEHAN: Right.

5 REP. ANCHIA: Anything else? Can I
6 present anything else?

7 MS. MCGEEHAN: Yes, there is a list of
8 items that state law allows for, and it includes photo
9 and non-photo ID, official mail, government mail.

10 REP. ANCHIA: What does the
11 affidavit say that I sign?

12 MS. MCGEEHAN: The affidavit.

13 REP. ANCHIA: Well, you don't have to
14 quote the language, but --

15 MS. MCGEEHAN: Yes, my general
16 understanding is the affidavit is an affidavit just
17 simply stating that the voter does not have their voter
18 registration certificate with them.

19 REP. ANCHIA: And that they're eligible
20 to vote in that election, correct?

21 MS. MCGEEHAN: Right.

22 REP. ANCHIA: And they hand over their
23 identification, whatever it may be, photo identification
24 from that long list. I usually just use my driver's
25 license and I sign the affidavit.



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1 What if I bust any of the provisions of
2 the affidavit, what if they're not true, what happens?
3 What's the penalty for that?

4 MS. MCGEEHAN: Well, it could be illegal
5 voting.

6 REP. ANCHIA: It could be a felony,
7 correct?

8 MS. MCGEEHAN: It could be a felony.

9 REP. ANCHIA: 2 to 10, \$10,000 fine,
10 right?

11 MS. MCGEEHAN: Right.

12 REP. ANCHIA: Okay. So we have a penalty
13 in place and we have an affidavit system currently in
14 place, all right.

15 Do other states have a photo
16 identification standard that allows for an affidavit to
17 be signed if they they're unable to meet the photo
18 identification standard? You sign the affidavit, again,
19 under significant penalties, correct?

20 MS. MCGEEHAN: Right.

21 REP. ANCHIA: Do other states have that?

22 MS. MCGEEHAN: I believe so.

23 REP. ANCHIA: Does Michigan have that?

24 MS. MCGEEHAN: Yes, I know Michigan does
25 because I think they have a pretty strict requirement



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1 that it has to be driver's license or other government
2 issued photo ID.

3 REP. ANCHIA: Right.

4 MS. MCGEEHAN: And so they have an
5 affidavit to kind of fail over if the person doesn't
6 have that photo ID.

7 REP. ANCHIA: So in Michigan, you're a
8 Korean war veteran, senior, don't drive any more, don't
9 have any form of photo ID, you can say, you know, under
10 penalty of perjury, two to ten in jail, \$10,000 fine, I
11 am who I say I am, all right, I am eligible to vote in
12 this election, and you sign something and you vote,
13 right?

14 MS. MCGEEHAN: That's my understanding.

15 REP. ANCHIA: Just kind of like in Texas
16 but without -- but substituting our voter registration
17 certificate ID standard for the photo ID standard they
18 have in Michigan, right?

19 MS. MCGEEHAN: Right.

20 REP. ANCHIA: And that person, and that
21 person, I guess, would be subject to prosecution. They
22 have left a piece of paper behind that is auditable,
23 correct? I mean, that --

24 MS. MCGEEHAN: Right.

25 REP. ANCHIA: And could a vote be



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1 invalidating at some point? Could a person be
2 prosecuted based on that paper? That's two questions.

3 MS. MCGEEHAN: Yes, I don't know the
4 Michigan law but I'm sure if they falsely swore an
5 affidavit, that's going to violate the state penal code.

6 REP. ANCHIA: What's always gotten me is
7 that I'm more worried about people not being able to
8 exercise the franchising in this state than what I think
9 is, are very few cases of voter impersonation. And I
10 think it would be a horrible injustice, by way of
11 example, if that senior was not allowed to vote just
12 because they didn't have the piece of paper.

13 In my view, having an affidavit bypass
14 standard would make a lot of sense if you were to adopt
15 a strict photo ID standard, so people don't fall through
16 the cracks, people who have fought for our country,
17 people who are disabled or people who just can't do it,
18 and we have had testimony. That's why I asked that line
19 of questioning, because I'm very concerned about folks
20 not being able to vote when they're legally entitled to
21 do it, if we adopt a strict standard.

22 What does Idaho do? I was curious to see
23 your write-up on Idaho. I mean, I see that they've gone
24 -- what I didn't see in the write-up is any sort of
25 affidavit, right?



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1 MS. MCGEEHAN: Right.

2 REP. ANCHIA: I like the fact that you
3 can -- you know, if ID becomes the new standard, you
4 know, and it is ostensibly or theoretically designed to
5 provide more security, then you can use it to vote same
6 day.

7 I think that's a very interesting
8 feature, one that I've been a proponent for in the
9 legislature.

10 What happens if you don't have it? I
11 guess it's here at the bottom. I'm sorry, I missed it.
12 Without the proper ID, have the option of signing an
13 affidavit with their name and address. Do you know what
14 the affidavit says?

15 MS. MCGEEHAN: I do not. We could, you
16 know, we could definitely go back and do a little more
17 research on the states that have the affidavit option
18 and kind of spell that out, because they're each so
19 different.

20 REP. ANCHIA: Okay.

21 MS. MCGEEHAN: We could do that. We
22 would be happy to do that.

23 REP. ANCHIA: Some of these other states
24 allow cure periods, two days, five days.

25 MS. MCGEEHAN: Right.



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1 REP. ANCHIA: Do you have data on how
2 many people come back to cure? I'd be interested to
3 know that.

4 MS. MCGEEHAN: I don't know that
5 question.

6 REP. ANCHIA: Some of these states, I'm
7 sure, probably keep logs of folks.

8 MS. MCGEEHAN: Right.

9 REP. ANCHIA: We turn them away and, you
10 know, we get a two percent cure rate or a 20 percent
11 cure rate. I'd be interested to know those numbers.

12 MS. MCGEEHAN: Okay.

13 REP. ANCHIA: Let's see what other
14 questions I have here.

15 A majority of states -- I should say 27
16 states, you used the 27 number earlier in your survey of
17 the states. Is it 27 states that have some form of
18 voter identification standard?

19 MS. MCGEEHAN: Yes.

20 REP. ANCHIA: That includes Texas,
21 correct?

22 MS. MCGEEHAN: Right.

23 REP. ANCHIA: So 23 states have nothing?

24 MS. MCGEEHAN: I'm not sure if that's the
25 best way to say it.



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1 REP. ANCHIA: Okay.

2 MS. MCGEEHAN: I think that they, kind of
3 like probably the way our law used to be, I think,
4 before 1997 in our state, it still required a voter
5 registration certificate, but if you didn't have it, you
6 could just simply sign the affidavit stating you didn't
7 have it.

8 I think we characterize those states as
9 not requiring ID because a person can vote without
10 requiring it but it's not to say that they never --

11 We can re-phrase that on the chart a
12 little better.

13 CHAIRMAN: What that means is in those
14 states, you can vote without any documentation?

15 MS. MCGEEHAN: Right.

16 CHAIRMAN: Whereas in the others, you
17 have to have some form of documentation, right?

18 MS. MCGEEHAN: Right. I guess in these
19 states where no ID is required, they have exceptions for
20 folks that don't have ID.

21 REP. ANCHIA: So of the 27 states that do
22 have a voter identification standard, a voter ID
23 standard like we do in here Texas, how many are photo
24 again, 11?

25 MS. MCGEEHAN: 11.



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1 REP. ANCHIA: And then how many of those
2 11 have an affidavit bypass? I see Idaho has one.

3 MS. MCGEEHAN: Yes. That I would need to
4 count up. I didn't look so I need to look through the
5 chart and get you that number, so we'll get you that
6 number too, out of the photo ID, how many allow an
7 affidavit.

8 REP. ANCHIA: Uh-huh. And of those 11,
9 how many do registration, same day registration either
10 during early vote or on election day? Is North Carolina
11 one of the 11?

12 MS. MCGEEHAN: No, they don't require
13 photo ID.

14 REP. ANCHIA: Got it. Okay. Thanks,
15 Ann. I appreciate it.

16 MS. MCGEEHAN: Okay. You're welcome.

17 CHAIRMAN: I'd like to know also, while
18 you're doing that, is, in other words, is it true that
19 even among the 27, you cannot vote without providing
20 some form of documentation?

21 In other words, if I understand the photo
22 ID, I assume in New Mexico, where you mentioned they
23 just signed an affidavit, I assume they have to present
24 some kind of non-photo before they sign the affidavit in
25 New Mexico, it's not just an affidavit, because if it's



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1 just an affidavit, then I put them in the 23 category
2 rather than 27, because you can vote without any
3 documentation whatsoever. I don't care what they
4 technically require, if they allow you, if you don't
5 have it --

6 MS. MCGEEHAN: Yes.

7 CHAIRMAN: -- to just sign something and
8 go vote.

9 MS. MCGEEHAN: We can do a little more
10 research.

11 Apparently it looks like they sort of
12 modified their existing photo ID law to kind of give
13 this out for the statement that that doesn't require any
14 ID, but we'll --

15 CHAIRMAN: In my mind, if anybody can go
16 up and vote without documentation, you know, because
17 they say, "I don't have whatever ID you require," then
18 would that not, more than likely, more fairly be put in
19 the 23 category?

20 I'm interested in states where you cannot
21 vote without a piece of paper, and then somehow
22 distinguishing one state from the other in terms of what
23 piece of paper they require. And I'd also, while you're
24 at it, I want to know if there's any voting rights
25 states that has had a voter ID bill approved through



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1 either the Obama justice department or the D.C. district
2 court, any. And if so, kind of what that, what that
3 legislation is.

4 MS. MCGEEHAN: Okay.

5 REP. HARPER-BROWN: Mr. Chair?

6 CHAIRMAN: Yes, Representative Harper-
7 Brown.

8 REP. HARPER-BROWN: Thank you,
9 Mr. Chairman. A couple of things. I agree with
10 Representative Anchia, we certainly don't want to make
11 it more difficult for people to vote, but do you
12 remember last year -- that's why I was so impressed when
13 the gentleman from Georgia came to speak to us, and I
14 think he testified to the fact that they had had 19
15 elections since they finally got their voter ID law in
16 place, and they hadn't had any complaints. Do you
17 remember, isn't that what he testified to?

18 MS. MCGEEHAN: That sounds right.

19 REP. HARPER-BROWN: And I know that I
20 looked personally and saw where the voting numbers had
21 actually gone up, so it didn't seem to keep people from
22 going to the polls because the voters had increased.
23 And I believe that question, I asked him that question
24 too and he agreed that the numbers had gone up, so it
25 hadn't really hurt them.



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1 The other thing is that I think there are
2 a lot of things that we pass laws on down here that we
3 don't have a hard, firm, fast number on. Children,
4 uninsured children I think is a very good example of
5 that.

6 We have some data, we have some cases of
7 children going in to hospitals without insurance but
8 then we extrapolate a percentage of uninsured children
9 compared to the number of children in the state based on
10 some facts that we use, but not do see say that because
11 five children went into the hospital without insurance,
12 we only have five children in the state that don't have
13 insurance. That's probably the case too, isn't it?

14 I mean, you at least said earlier it's
15 hard to quantify whether people are voting illegally or
16 not because somebody has to know that that person
17 walking in there is impersonating someone else or has
18 some really good fact behind it. So I mean, we
19 extrapolate a lot of the numbers and pass a lot of laws
20 based on per formas or on estimates, not on the hard
21 facts.

22 Getting back to the mail-in ballot,
23 because I think that's probably what they were talking
24 about when they said ballots, is it possible --

25 Their claim is that it's possible for a



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1 vote harvester to take a mail-in ballot and have someone
2 sign four or five of these applications at a time and
3 then they mark which election it's for and mail it back
4 in. Is that possible? Because there's not a hard firm
5 data on a request for a ballot for each election. You
6 could have someone in a nursing home sign one of these
7 four or five times and then just check and mail it in.
8 Is that possible?

9 MS. MCGEEHAN: I mean, it's possible,
10 sure. I mean, a campaign could do that and have a voter
11 sign and leave it blank, and then when it came time for
12 a election, submit that ADDM on behalf of that voter.

13 REP. HARPER-BROWN: Okay, all right.
14 Thank you.

15 MS. MCGEEHAN: Uh-huh.

16 CHAIRMAN: Dr. Allen?

17 REP. ALLEN: Yes, my question is on
18 provisional ballots. What, if any, impact has
19 provisional ballots had on the election process? How
20 are they counted, when are they counted, are they
21 counted?

22 MS. MCGEEHAN: Let me see. I did get
23 some data. I figured that question might come up this
24 morning. In the November, 2009 constitutional amendment
25 election, this is based on what counties have reported



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1 to us. There were 3903 provisionals cast, and out of
2 that, only 421 were counted. And that's generally what
3 we see. Most provisional ballots are not counted.

4 In the primaries, the March primaries,
5 there were, in both parties combined, there was 3110
6 provisional ballots cast and there were 1402 counted.

7 REP. ALLEN: When they are counted, do
8 they have an impact on the election?

9 MS. MCGEEHAN: They certainly can have an
10 impact. You know, in a close election, the provisionals
11 ballots are required to be reviewed and processed and
12 counted within seven days of the election.

13 REP. ALLEN: So if I have a contest that
14 I'm contesting, it may have an impact, but it's their
15 example, the election is today and the winner is
16 announced tonight at 7:00 or 8:00, provisional ballots
17 have no impact on the that election?

18 MS. MCGEEHAN: Well, they have to be
19 counted. I mean, I wanted to make sure, because a lot
20 of folks think that unless it's a close election, the
21 provisional ballots aren't qualified and counted, and
22 they have to be qualified and counted regardless of the,
23 you know, the margin of victory.

24 What's announced on election night is
25 unofficial election returns, so until the provisional



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1 ballots and qualified and counted and until the overseas
2 ballots have come in, because they can come in up to
3 five days after the election, it's not official until
4 the canvas, because the canvas occurs after those two
5 events, after the provisional ballots and overseas
6 ballots have come back in.

7 So yes, I mean, the press likes to
8 announce on election night. It's a good indication but
9 it's not the official canvas totals until all the
10 ballots are qualified.

11 REP. ALLEN: Okay. When you say 3110
12 ballots were cast in the March election but only 1000
13 were counted, why might -- that's a large number of
14 people that say, "I want to vote. I'm at my wrong
15 polling place, let me vote here."

16 MS. MCGEEHAN: Yes.

17 REP. ALLEN: And I vote provisionally,
18 what is kicking all of these out?

19 MS. MCGEEHAN: Well, for the November
20 general election, we do collect the data from the
21 counties on the reason why a provisional ballots weren't
22 counted, and so what our data has shown from '06 and '08
23 is the usually the reason a provisional ballot is not
24 cast is that the person is casting a vote, they're a
25 registered voter but not in that precinct, so they're



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1 showing either in a different county or a different
2 precinct from where they're registered to vote so it's
3 not counted. It does serve, by voting provisionally,
4 that serves to get them registered in that new precinct
5 but their ballot is not counted.

6 REP. ALLEN: So it becomes a registration
7 process too?

8 MS. MCGEEHAN: Yes. The affidavit serves
9 as basically a voter registration application. So it
10 will serve to get them registered for future elections
11 but it does not cure it for that election.

12 REP. ALLEN: Okay.

13 CHAIRMAN: Just to be clear, that
14 situation, even if I vote for president, if I'm in the
15 wrong precinct, my vote for president doesn't count?

16 MS. MCGEEHAN: That's correct, it does
17 not count.

18 CHAIRMAN: Earlier, you said when you
19 registered to vote, you check to make sure that their
20 driver's license matches the person who's registering or
21 that their Social Security number matches the person who
22 registered. If they don't have either of those things,
23 are they registered anyway?

24 MS. MCGEEHAN: Yes. But in that
25 situation, where they don't have either one of those



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1 identification numbers, they are registered but they are
2 marked as ID required, which means that when that voter
3 votes, they have to produce evidence of their identity.
4 And it's the same list that's authorized in state law
5 for a voter who doesn't have their voter registration
6 certificate, so whether they vote by mail or in person,
7 they have --

8 CHAIRMAN: I'm trying to understand how
9 that's different than just voting period.

10 MS. MCGEEHAN: Well, the difference is
11 they can't show their voter registration certificate.

12 CHAIRMAN: Okay.

13 MS. MCGEEHAN: So they can't come in with
14 that. It has to be something other than their voter
15 registration.

16 CHAIRMAN: That's the only difference?

17 MS. MCGEEHAN: Yes.

18 CHAIRMAN: Okay. Yes, Representative.

19 REP. HEFLIN: Real quickly, and I should
20 have asked this earlier. You know, the attorney general
21 has jurisdiction of prosecuting these cases. Has there
22 been any attempt to survey the 254 counties and all the
23 little cities as to actual allegations of fraud that did
24 not go to the Attorney General or that did not report to
25 the Secretary of State things that either they blew off



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1 or tried to prosecute locally, or anything like that,
2 has there been a survey done as to what's happening out
3 in the field?

4 MS. MCGEEHAN: I'm not aware of any
5 survey like that.

6 REP. HEFLIN: Would that be beneficial?
7 I mean, you know, if that's what we're looking at, maybe
8 we need to survey our prosecutors out there, see if it's
9 out there, why aren't they doing it.

10 MS. MCGEEHAN: Uh-huh. Okay, we can look
11 into that.

12 REP. HEFLIN: Thank you.

13 MS. MCGEEHAN: Uh-huh. That's all I
14 have.

15 REP. BOHAC: Members, are there any other
16 questions? If not, Committee on Elections stands
17 adjourned.

18 (End of recording.)
19
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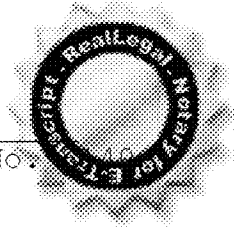
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